UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

BARNESVILLE HOSPITAL ASSOCIATION, INC. **Employer**	
and	**Case No. 8-RD-1875**
DIANA FLANAGAN, AN INDIVIDUAL **Petitioner**[1]	
and	
DISTRICT 1199, OH, KY/SERVICE EMPLOYEES INTERNATIONAL UNION **Union**	

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act (hereafter referred to as the Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The name of the Petitioner appears as amended at hearing
[2] The Employer and the Petitioner filed post-Hearing briefs that have been duly considered.

4. No question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act, for the following reasons:

The Employer operates an acute healthcare facility located in Barnesville, Ohio, with related facilities in Barnesville, Woodsfield and Bellemont, Ohio. The Union currently represents a unit of the Employer's technical employees. The sole issue in this matter is whether the decertification petition filed herein on October 19, 2000 should be dismissed due to the existence of a contract bar. The Union argues that a collective bargaining agreement was reached and implemented months before the petition was filed and that there are sufficient signed writings in existence to meet the Board's contract bar standard. The Employer and Petitioner argue that there is no signed contract and that any writings existing from the negotiations do not suffice to establish a contract bar.

The evidence presented in this matter establishes that the Employer and Union began negotiations for an initial contract in October 1998 and concluded those negotiations on December 20, 1999. During the course of the negotiations, both parties exchanged a series of written proposals. As tentative agreement was reached on a contract article, the parties would each initial and date each such article. This process is referred to in the record as "'TA'ing" a proposal. The articles that the parties initialed-off on in this manner include definition of bargaining unit work, language regarding discipline, grievance-arbitration procedure, hours of work, overtime and job bidding. A complete set of said articles was received in to evidence at the hearing. By the last few negotiation sessions on December 20, 1999, only a few remaining matters, including wages, remained under discussion. A final written proposal by each party provided the

basis for a tentative agreement on all remaining issues. These documents were not initialed, but the record establishes that the parties understood the terms of this agreement on these last few issues. On this same date, December 20, the chief negotiators for the Employer and Union executed a handwritten document that states the following: "**Upon ratification the agreed language is in full force and effect although its final form may be altered."** The agreement was ratified by the Union membership shortly after negotiations concluded.

The Employer then prepared a copy of the entire contract for execution. This document was sent to the Union in February 2000. While the witnesses at hearing could not fully explain the entire sequence of events after that, it appears that the then Union representative did not read the contract for some extended period of time. Once the review was completed, she raised a few minor objections to the wording of a few provisions of the document. At some point thereafter, the Employer agreed to change the language to meet the Union's objections. Neither party has actually signed this document in either its original or modified form.

In the meantime, the terms of the contract, including wages, were put into effect immediately after ratification. The Employer went so far as to hold a series of meetings with its managers to discuss the implementation of the terms of the new contract. Nonetheless, the Employer notes that some provisions have not gone into effect. The record shows, however, that any arguable omissions from implementation are limited to matters such as employees not being provided a copy of the contract and a claim that some employees continue to file initial grievances as they did prior to the new contract.

Based on the above, and the record as a whole, I find that the parties reached a complete agreement in December 1999, which was put into effect months before the petition was filed. Any discrepancies discovered later were, at most, nothing more than disagreements over semantics. Even the Employer does not claim any material issues remained after December 20, 1999. Therefore, the remaining question to be addressed is whether the writing(s) memorializing this agreement suffice to establish a contract bar.

The Board, in **Appalachian Shale Products, 121 NLRB 1160 (1958),** set forth the basic requirements necessary for a contract to serve as a bar to an election. In sum, the contract must be in writing and executed by the parties; contain substantial terms and conditions of employment; and encompass the employees involved in the petition and cover an appropriate unit.

There is no dispute that the agreement in question covers an appropriate unit which is encompassed by the decertification petition.

In applying the remaining tenets of **Appalachian Shale**, the Board has held that not every single provision of the agreement must be contained in a writing for it to qualify as a bar. **St. Mary's Hospital, 317 NLRB 89, 91 (1995).** Further, a document initialed but not signed, setting forth most, but not all, the terms of the agreement has been deemed sufficient to constitute a bar. **Television Station WVTV, 250 NLRB 198 (1980).**

In **Bendix Corp., 210 NLRB 1026 (1974),** the parties agreement was evidenced by two documents, one containing initialed terms tentatively agreed to and a second, signed document setting forth additional terms and making reference to the initialed terms set forth in the other. The facts of the **Bendix** case are nearly identical to those in

the instant matter. In **Bendix** the relevant documents consisted of a writing containing initialed terms and a second, signed writing stating that the entire agreement was to go into effect immediately upon ratification.

The Board has noted that the fact there are omissions in the documents found to be a bar is of no significance so long as the documents evidence an agreement containing "substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship." **USM Corp., 256 NLRB 996, 999 fn. 18 (1981).** Whatever minor omissions may exist in the documents in the instant case, all terms were clearly understood by both parties, were fully implemented after ratification and in place at the time of the hearing.

The Employer urges that the Board's decision in **Seton Medical Center, 317 NLRB 87 (1995)** dictates a different conclusion. That case is clearly distinguishable from the instant matter. In **Seton**, the writings constituting the alleged "contract bar" were limited to initialed articles tentatively agreed to. The Board deemed these writings insufficient to constitute a contract bar for one reason -- they were not accompanied by any document, signed by both parties, that reflected a final agreement had been reached and that contract negotiations were concluded. In the instant case, as discussed above, there are documents, signed or initialed by both parties, which establish that the parties reached an agreement. Accordingly, I find the signed and initialed documents in existence prior to filing of the petition constitute a contract bar.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be hereby dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by January 2, 2001.

Dated at Cleveland, Ohio this 19th day of December 2000.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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